
(2003) 01 AP CK 0031
In the Andhra Pradesh High Court
Case No : CMA No. 3238 of 2001

Tammina Ananda Kumar

APPELLANT

Vs

Syndicate Bank Staff Co-operative Buildings Society Ltd.

RESPONDENT

Date of Decision : 09-01-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2

Citation : AIR 2003 AP 287 : (2003) 2 ALD 297 : (2003) 6 ALT 814

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : V.S.R. Anjaneyulu, for the Appellant; P.M. Gopal Rao, for the Respondent

Final Decision : Dismissed

Judgement

Goda Raghuram, J.—CMP No. 1 1805/2002 in CMP No. 24385/2001 in the present Civil Miscellaneous Appeal was filed by the respondent in the Appeal to vacate the interim order dated 21-12-2001 passed in CMP No. 24385/2001, when the said vacate application came up for hearing, both the Counsel representing the parties had advanced elaborate arguments and made a request to dispose of the main Appeal itself and thus, with the consent of both the Counsel, the main Appeal itself was heard and the same is being disposed of.

2. The appellant herein filed the present Civil Miscellaneous Appeal under Order 43 Rule 1 of the Code of Civil Procedure, hereinafter referred to as "Code" in short, as against an order made in IA No. 1410/2000 in OS No. 403/2000 on the file of Principal Senior Civil Judge, Vijayawada. The "appellant herein, the plaintiff in the aforesaid suit, filed an application under Order 39 Rules 1 and 2 and Section 151 of the Code praying for temporary injunction against the respondent-society restraining the said society from executing the decree to the extent of the plaint schedule property in EP No. 4/98 in OS No. 1705/85 on the file of the IV Additional Junior Civil Judge, Vijayawada, pending disposal of the suit. The appellant/ plaintiff instituted OS No. 403/2000 on the file of the Senior Civil

Judge, Vijayawada for the reliefs of cancellation of the alleged decree and judgment dated 17-3-1986 passed in OS No. 1705/85 on file of the Principal District Munsif, Vijayawada, for declaration of plaintiffs title over the plaint schedule property and for possession thereof, for permanent injunction restraining the members of the defendant's society from in any way interfering with the peaceful possession and enjoyment of the plaintiff in the plaint schedule properties, costs of the suit and also for such other suitable reliefs. The learned Principal Senior Civil Judge, Vijayawada, on hearing both the sides and after marking Exs. A1 to A8 and Exs. B1 to B4 had arrived at a conclusion that the appellant/plaintiff had not established prima facie case or balance of convenience and had ultimately dismissed the application with a direction that the trial of the suit itself can be expedited. Aggrieved by the same, the present Appeal was preferred by the appellant and as already referred to supra, interim order was obtained and consequent thereupon an application to vacate the interim order had been filed and that is how the matter had been taken up for the final hearing of the appeal itself and both the Counsel were heard at length.

3. The facts in brief, for the purpose of disposal of the present Civil Miscellaneous Appeal can be narrated as hereunder.

4. As already stated supra, the appellant is the plaintiff in OS No. 403/2000 on the file of the Principal Senior Civil Judge, Vijaywada and the petitioner in the application, praying for the relief of temporary injunction in IA No. 1410/2000. The case of the appellant is that he purchased the plaint schedule property for a cash consideration of Rs. 73,500/- from Smt. Gundra Kanaka Durga under a registered sale deed dated 19-1-2000 and ever since the appellant has been in continuous possession and enjoyment of the plaint schedule property. It is also stated that the plaint schedule property is part and parcel of 305 sq.yards which was purchased by his predecessor-in-title one G. Venkata Swamy even from the year 1944 and he had perfected his title by adverse possession to the knowledge of the predecessor-in-title of the respondent/defendant-society. It was further stated that the respondent/defendant-society purchased the Northern side property to the plaint schedule property in or about 1984 and the members of the said society raised an objection relating to the possession of late G. Venkata Swamy and hence the said Venkata Swamy filed OS No. 704/84 on the file of III Additional Junior Civil Judge, Vijayawada for permanent injunction and the suit was decreed on merits. It was also stated that the respondent/defendant-society also filed a suit for recovery of possession in OS No. 1705/85 on the file of Principal District Munsif, Vijayawada and obtained an ex parte decree dated 17-3-1986 against the said late G. Venkata Swamy playing fraud on the Court since no notice was served on late G.Venkata Swamy in the suit. It was further stated that the respondent/defendant-society had not pleaded in OS No. 1705/85 about the litigation between the parties and had not revealed the obtaining of decree against it is the earlier suit by late G. Venkata Swamy. It was further stated that late G. Venkata Swamy executed a registered Will in respect of the schedule property on 29-7-1991 in favour of his daughter-in-law arid died on

17-10-1991 and thereafter the plaint schedule property was purchased by M.V.M.Simhachalam from the legatee of late G. Venkata Swamy under a registered sale deed dated 10-2-1997 after making publication in newspaper and calling for objections. One G. Kanaka Durga purchased the plaint schedule property from M.V.M. Simhachalam under a registered sale deed dated 11-9-1998 and from her the appellant/plaintiff had purchased the property for a valuable consideration of Rs. 73,500/- under registered sale deed dated 19-1-2001 and the appellant also got mutated the property in municipal records. While things stand thus, the respondent/defendant-society filed EP No. 4/98 in OS No. 1705/85 on the file of IV Additional Junior Civil Judge, Vijayawada for recovery of possession on the alleged ex parte decree dated 17-3-1986 and in such circumstances, the appellant/ plaintiff had moved an application praying for the relief of temporary injunction as referred to supra.

5. The respondent had resisted the said application taking a specific stand that this application is filed in collusion with the legal representatives of late G. Venkata Swamy and E.P. in question as filed in December 1997 and the Court after hearing the objections of the legal representatives of late G. Venkata Swamy was pleased to pass order of delivery of 18-9-2000. It was, also stated that Gajjavarapu Mallikharjunarao, the 4th Judgment-debtor in EP No. 4/98 filed CRP No. 1304/2000 on the file of this Court against EP No. 4/98 in OS.No. 1705/85 and the same was dismissed. The learned IV Additional Junior Civil Judge, Vijayawada had ordered delivery of property after considering the contentions of the alleged owners of the property who are the legal representatives of late G. Venkata Swamy. It was further stated that the present appellant had been watching the proceeding and had instituted the suit on 19-9-2000 and sought for an ex parte temporary injunction and he has no locus standi to file such a suit at all or to move such application. One Jakka Rama Devi, who is the daughter of late G. Venkata Swamy filed the suit OS No. 447/99 on the file of III Additional Senior Civil Judge, Vijayawada against the respondent/ defendant for cancellation of the decree and also for permanent injunction mentioning the plaint schedule property in an extent of 315 sq.yards of site covered by RS No. 149/1 in Ward No. 5/2 and the said suit is pending disposal and the present plaint schedule property is for an extent of 105 sq.yards which is part and parcel of the schedule property mentioned by the plaintiff in OS No. 447/99. It was also stated that the Appellant had purchased the property during the pendency of the litigation and hence the sale transaction is hit by Section 52 of the Transfer of Property Act, 1882.

6. As already referred to supra, on behalf of the respective parties, Exs.A1 to A8 and Exs.B1 to B4 were marked and ultimately the relief was negated to the appellant and aggrieved by the same, the appellant had preferred the present Civil Miscellaneous Appeal.

7. Sri V.S.R. Anjaneyulu, Counsel representing the appellant with all vehemence had made the following submissions. The learned Counsel while commencing his

submissions with all vehemence had attacked Ex.B4 and had contended that this order made in Ex.B4 will not come in the way of this Court at all in deciding the present Appeal on its own merits. The learned Counsel also had submitted that no doubt the appeal filed by Jakka Rama Devi against the self-same respondent in AAO No. 3134/2000 raising similar contentions had been dismissed by this Court and this document was marked as Ex.B4. But however, several important aspects had not been put forth before the learned Judge and inasmuch as it is a proceeding arising out of an interlocutory order, it will not operate as res judicate and hence the present CMA has to be decided on its own merits ignoring Ex.B4. The learned Counsel also would point out that the judgment was made in OS No. 1705/85 on 17-3-1986 and the judgment in OS No. 704/ 84 was delivered on 12-9-1988 and the very fact that the decree for possession which had been obtained in OS No. 1705/85 was not brought to the notice of the Court when the subsequent judgment was delivered, will clearly point out the prima facie case relating to fraud. The learned Counsel also had drawn my attention to the judgment delivered in OS No. 1705/85 and had contended that not only that it is a decree made ex parte, but also that the very judgment is not in accordance with the provisions of Order 20 of the Code. The learned Counsel had placed strong reliance on Rameshwar Dayal Vs. Banda (Dead) through his Lrs. and Another, , Aziz Ahmed Khan Vs. I.A. Patel, , Smt. Swaran Lata Ghosh Vs. H.K. Banerjee and Others, and S.N. Mukherjee Vs. Union of India, . The learned Counsel also contended that the appellant is a bona fide purchaser and as an aggrieved person he is definitely entitled to maintain a suit of this nature and can definitely point out the element of fraud so as to restrain the opposite party from executing such a fraudulent decree. Strong reliance was placed on Yelamachili Venkateswara Rao v. Tathineni Venkata Subbayya, AIR 1980 SC 208, Surendra Singh and Others Vs. Lal Sheoraj Bahadur Singh and Others, , Syed Shah Gulam Ghouse Mohiuddin Khamesul Qadri and Others Vs. Syed Shah Abdul Har Khamisul Qadri and Others, , and Rajkumar Sanahal Singh and Others Vs. R.K. Khutasana Singh and Others, in this regard. Further elaborating this submissions, the learned Counsel also pointed out that mere fact that one of the legal representatives of late G. Venkata Swamy had been unsuccessful in obtaining a temporary injunction cannot in any way come in the way of the appellant praying for such a relief, especially in the light of the peculiar facts and circumstances of the case. It was further contended that inasmuch as Ex.B4 is only an order relating to an interlocutory order, the same will not operate as res judicata and hence the present CMA has to be decided on merits. The learned Counsel also had placed reliance on Dommeti Venkanna In Re 1986 (2) ALT 461 and Arjun Singh Vs. Mohindra Kumar and Others, .

8. Per contra, Sri Srinivas, the learned Counsel representing the respondent in all fairness had submitted that at this distant point of time he cannot explain what had transpired and why the fact of obtaining a decree for delivery of possession had not been brought to the notice of the Court when the Judgment in OS No. 704/1984 was delivered. But however, the learned Counsel contended that here

is a party who cannot be said to be a bona fide purchaser and it is not in dispute that when the proceedings are pending, the appellant had purchased the property which is hit by the doctrine of lis pendens. The learned Counsel also contended that the way in which the legal representatives of the deceased G. Venkata Swamy have been creating litigations clearly go to show that only with a view to defeat the decree obtained by the respondent-society, this litigation was thought of. It was further contended that in the matter filed by Jakka Rama Devi, one of the legal representatives of the deceased G. Venkata Swamy, in AAO No. 3134/2000, which was marked as Ex.B4 in the present matter, similar contentions had been advanced and all such contentions had been negated by this Court. Though this order may be while deciding an interlocutory application, due weight must be given to the reasons recorded in Ex.B4, especially while appreciating whether the appellant has made out a prima facie case for grant of temporary injunction as prayed for or not. The learned Counsel also had drawn my attention to the Judgment made in OS No. 1705/85 and had submitted that it is definitely a judgment made in accordance with law and at any rate after such a long lapse of time in yet another independent proceeding, the validity of such judgment cannot be called in question and the execution of the decree lawfully obtained cannot be restrained by issuance of temporary injunction. The learned Counsel also had taken me through the impugned order and the reasons recorded by the learned trial Judge while negating the relief of temporary injunction.

9. Heard both the Counsel at length.

10. The only question that has to be decided in the present Civil Miscellaneous Appeal is whether the appellant is entitled for temporary injunction as prayed for on the ground of fraud in the facts and circumstances of the case.

11. The facts in detail had been narrated supra and they need not be repeated again. The respective parties had relied upon the documentary evidence Exs.A1 to A8 and Exs.B1 to B4. Ex.A1 is a certified copy of the judgment in OS No. 704/84 on the file of III Additional District Munsif, Vijayawada. Ex.A2 is a certified copy of the plaint in OS No. 1705/85. Ex.A3 is a certified copy of the decree in OS No. 1705/85. Ex.A4 is the registration extract of the registered Will executed by late G. Venkata Swamy, Exs.A8 and A6 are the copies of the sale deeds. Ex.A7 is the registered sale deed executed by G. Kanaka Durga in favour of the appellant. Ex.A8 is the tax receipt. Likewise, Ex.B1 is a certified copy of the order in EP No. 4/98 in OS No. 1705/85 on the file of IV Additional Junior Civil Judge, Vijayawada. Ex.B2 is the office copy of the plaint in OS No. 447/99 on the file of III Additional Junior Civil Judge, Vijayawada. Ex.B3 is the written statement in the said suit. Ex.B4 is the judgment in AAO No. 3134/2000 on the file of this Court.

12. Before advert to the respective contentions advanced by the respective Counsel, I had also gone through the impugned order and the reasons recorded by the learned Trial Judge while deciding the temporary injunction application.

The Point had been discussed in detail at paragraph 7. Be that as it may, coming to the respective contentions of the respective Counsel advanced, at the threshold it has to be considered whether the appellant/plaintiff has established prima facie case, balance of convenience and irreparable loss, or at least two of the three ingredients specified supra for the grant of temporary injunction.

13. After a long lapse of time, the validity of the judgment made in OS No. 1705/85 itself is assailed on the ground that it is not a judgment in accordance with law. It may be appropriate to have a look at the nature of the said judgment:

"Suit to pass a decree in favour of plaintiff, directing the defendant to deliver vacant possession of the plaint schedule land, remaining all his structures and other belongings, to the plaintiff and for ascertaining damages or mesne profits for use and occupation of the plaint schedule land by the defendant, from the date of the plaint, till the date of delivery of vacant possession of the land to the plaintiff and directing the defendant to pay the amount so ascertained to the plaintiff and for costs.

PW1 examined. Ex.A1 marked. Plaintiff evidence closed. Suit of the plaintiff is decreed with costs as prayed for."

In the decision referred in Ramesh Dayal's case (supra), the Apex Court while dealing with judgment in a Small Cause suit held that a judgment rendered by a Small Causes Court not stating the points for determination nor giving findings or decision on each of them, is not a judgment and a decree in the eye of law. In the decision referred in Aziz Ahmed Khan's case (supra), a Full Bench of this Court held that while pronouncing judgments the Courts should apply their minds to the facts of the case and the points at issue and give a reasoned judgment thereon after duly evaluating the evidence adduced and after considering the contentions of the parties and that a judgment not in conformity with Order 20 Rule 4(2) is not a judgment at all. In the decision referred in Swaran Lata 's case (supra), the Apex Court while dealing with a contested suit where the trial Court decreed the claim without delivering judgment and the High Court also in appeal confirmed the trial Court's decision without recording reasons, held that there was no real trial of defendant's case. In the decision referred in S.N. Mukherjee's case (supra), it was held by the Apex Court that where a decision is made by an administrative authority, reasons must be recorded except in cases where the requirement is dispensed with expressly or by necessary implication.

14. As can be seen from the judgment in the present case, which had been referred to supra, the evidence of PW1 was recorded and Ex.A1 was marked and since there was no contest, the plaintiffs evidence was closed and the suit was decreed. At any stretch of imagination, it cannot be said that this is not a judgment in conformity with the provisions of Order 20 of the Code. Even otherwise, when an independent suit had been instituted by a purchaser pending litigation, questioning the validity of the decree in such a proceeding, a question

of this nature cannot be canvassed, in my considered opinion, for the purpose of establishing a prima facie case to establish the ground of fraud, suffice for me to say that this contention has to be negated in the light of the facts and circumstances of the present case.

15. It is pertinent to note that the respondent is a society. The mere fact that when the judgment was delivered in OS No. 704/84, the decree of delivery of possession in the prior suit was not brought to the notice by itself cannot be a ground to hold prima facie that fraud is established. At any rate, this is a question which may have to be gone into at the time of the final disposal of the suit. The appellant/plaintiff, for getting temporary injunction of this nature, has to establish a strong prima facie case. It is not in dispute that during the pendency of E.P. proceedings, purchase was made and no doubt the appellant refers to several purchases, but such transactions are hit by the doctrine of lis pendens. Apart from it, a purchaser cannot be on a better footing when compared to the legal representative of the deceased G. Venkata Swamy. In fact, certain legal representatives already had questioned the EP proceedings and they were unsuccessful in the Civil Revision Petition referred to supra and the daughter of G. Venkata Swamy also had preferred AAO before this Court and had been unsuccessful in getting a temporary injunction of similar nature which was marked as Ex.B4.

16. No doubt, strong reliance was placed on the decision referred in Dommenti Venkanna 's case (supra) and also in Arjun Singh 's case (supra) to convince the Court that these interlocutory orders will not operate as res judicata. It is no doubt true that these orders may not operate as res judicata, but the Court is concerned with establishing prima facie case for granting of temporary injunction on the ground of fraud. In the decision referred in Shah Gulam's case (supra), it was held that a decree, whether it is of an inferior Court or of a superior Court, whether it be a consent decree or ex parte or a decree passed after contest, can be always impeached on the ground of fraud and if the party impeaching it is a third person, he can treat the fraudulent decree as a nullity, but of course a person who is a party to it can do so only if he comes within time. In the decision referred in Surendra Singh's case (supra), it was held that after hearing both the sides, if the Court is convinced prima facie that the decree or order has been obtained by fraud or is otherwise not binding or enforceable against the applicant, injunction during the pendency of the suit may be granted. In the decision referred in Yelamanchili Venkateswara Rao's case (supra), a Division Bench of this Court held that in a suit to declare decree in earlier suit as vitiated by fraud, interim injunction restraining execution of decree can be ordered on prima facie proof of fraud.

17. In the present case, as discussed supra, the appellant who had approached this Court for the relief, prima facie, cannot be said to be a bona fide purchaser since the appellant had purchased the property during the pendency of the execution proceedings. Apart from this aspect of the matter, the legal

representatives of the deceased G. Venkata Swamy have been making serious attempts to defeat the execution of the decree and in fact objected to the execution proceedings and had been unsuccessful in the Civil Revision Petition filed before this Court. Not satisfied with the same, yet another matter was carried to this Court where similar relief had been negatived under Ex.B4. Hence, viewed from any angle, it cannot be said that the appellant is entitled to the relief prayed for on the ground that the appellant had established prima facie case in proving the element of fraud so as to get the relief of temporary injunction. When the first ingredient itself is not satisfied, it may not be necessary to dwell upon and decide on the other ingredients to be satisfied, while either granting temporary injunction or refusing temporary injunction.

18. In view of the foregoing discussion, I am of the opinion that the Civil Miscellaneous Appeal is devoid of merits and accordingly the same is dismissed, with costs. It is needless to say that the observations made above are only for the purpose of disposal of the interlocutory application and hence the trial Court is expected to dispose of the suit uninfluenced by the observations referred to supra.